

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
KUKIO UTILITY COMPANY, LLC and)
KONA WATER SERVICE COMPANY, INC.)
For Approval of (a) the Sale and)
Transfer of Assets of Kukio Utility)
Company, LLC and Related Matters;)
and (b) Financing Arrangements.)

DOCKET NO. 2008-0109

DECISION AND ORDER

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Docket No. 2008-0109

DECISION AND ORDER

By this Decision and Order, the commission approves the proposed sale and transfer of assets of KUKIO UTILITY COMPANY, LLC ("KUC") and other related matters, including certain financing arrangements, as described in the application filed jointly by KUC and KONA WATER SERVICE COMPANY, INC. ("KWSC") (collectively, "Applicants"), subject to certain regulatory conditions.

I.

Background

A.

Description of Applicants

1.

KUC

KUC, a Delaware member-managed limited liability company, is a public utility that provides both water and

wastewater treatment services in Kailua-Kona on the island of Hawaii. KUC received its certificate of public convenience and necessity ("CPCN") from the commission to operate in 2003.¹ WB Kukio Resorts, LLC ("WB Kukio") is KUC's parent and sole member.

Under its CPCN, KUC provides water and sewer services to: (1) the Kukio Beach Club, a master planned community; (2) a residential development known as Manini'owali; and (3) the Kua Bay Beach Park (aka, the Kekaha Kai State Park). In addition, KUC also has the authority to provide untreated bulk water on an interruptible "as is/where is" basis (subordinate to potable water needs) to the Kukio Golf and Beach Club ("Golf & Beach Club").² In 2007, KUC obtained commission approval to further expand its service territory to provide potable water only (i.e., no sewer service) to the planned four-lot Kukio Mauka subdivision, located adjacent to the planned five-lot Stroud subdivision.³

Applicants represent that WB Kukio, whose business is focused on operating the Golf & Beach Club and selling the surrounding real estate for development, decided to sell KUC since the provision of utility services is not one of its core businesses. According to Applicants, WB Kukio selected KWSC

¹See In re Kukio Utility Company, LLC, Docket No. 01-0433, Decision and Order No. 20103, filed on March 23, 2003 ("Decision and Order No. 20103"), as amended by Order No. 20688, filed on November 16, 2003.

²See In re Kukio Utility Company, LLC, in Docket No. 04-0137, Decision and Order No. 21836, filed on May 25, 2005.

³See In re Kukio Utility Company, LLC, Docket No. 2006-0414, Decision and Order No. 23492, filed on June 14, 2007.

since as the owner of the Golf & Beach Club (one of KUC's largest customers) WB Kukio desires to have the utility serving the area owned and managed by a professional utility operator with a nationwide presence and sufficient experience to ensure that customers in the area will be provided with quality utility services.

2.

KWSC

KWSC is a newly formed Hawaii corporation with its corporate offices in San Jose, California. KWSC's sole shareholder is Hawaii Water Service Company, Inc. ("HWSC"). HWSC is a public utility that provides potable water service in its service territory in Kaanapali, on the island of Maui.⁴ In addition, HWSC was recently granted commission approval to provide water and wastewater services in Pukalani on Maui, and in Waikoloa on the island of Hawaii through approval of HWSC's acquisitions of Pukalani STP Co., Ltd. ("Pukalani STP"), Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co., Inc., and Waikoloa Resort Utilities, Inc. (collectively, the "Waikoloa Utilities").⁵

⁴HWSC provides water services to resort and residential developments in its service territory in Kaanapali which consists of the Kaanapali Golf Estates, Kaanapali Hillside, Kaanapali Vista, Kai Ala, and Royal Kaanapali Estates.

⁵See In re Pukalani STP Co. Ltd. and Hawaii Water Service Company, Inc., Docket No. 2007-0238, Decision and Order filed on June 12, 2008 ("Pukalani"); In re Waikoloa Water Co., Inc., Waikoloa Sanitary Sewer Co. Inc., Waikoloa Resort Utilities, Inc., and Hawaii Water Service Company, Inc. ("Waikoloa"), Docket No. 2008-0018, Decision and Order filed on August 20, 2008.

Moreover, HWSC manages HWS Utility Services, LLC ("HWSUS") which is acquiring the assets of Island Utility Services, Inc. ("IUS"), a non-regulated company that operates and manages a number of Hawaii public utilities through a contract for its services, including KUC.

HWSC is a wholly owned subsidiary of California Water Service Group ("CWSG"), which is a Delaware holding company trading on the New York Stock Exchange under the symbol "CWT." According to Applicants, CWSG has provided high-quality water utility services through its subsidiaries since 1926, and in addition to HWSC, CWSG's operating subsidiaries include California Water Service Company, New Mexico Water Service Company, Washington Water Service Company, and CWS Utility Services, a non-regulated subsidiary. Further, Applicants represent that: (1) "Standard & Poor's rates CWSG's subsidiaries bonds at A+, their highest rating for any of the investor-owned water utilities"⁶; and (2) CWSG and its operating subsidiaries collectively have available a \$75 million bank line of credit.

B.

Application

On June 6, 2008, Applicants filed their application ("Application")⁷ requesting that the commission, among other

⁶See Application at 8.

⁷Applicants served copies of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party to this proceeding pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii

things: (1) approve the Asset Purchase Agreement ("Agreement") dated June 2, 2008, between KWSC and KUC; (2) approve, to the extent deemed necessary or appropriate, the affiliate agreement ("Affiliate Agreement") transferring certain wastewater assets currently held by KUC's affiliate, WB Manini'owali, LLC ("Affiliate"), to KWSC; (3) approve, in connection with the above, the sale and transfer of the "Transferred Assets" of KUC and Affiliate, as defined in Section 1.1 of the Agreement and Affiliated Agreement, respectively, including the transfer of KUC's CPCN to KWSC (collectively, the "Proposed Transfer"); (4) order that KUC's currently approved rules, regulations, tariffs, and rates (collectively, the "Tariff") shall continue in effect following the closing of the Proposed Transfer, provided that KWSC republish the Tariff in its own name with the same rules, regulations, tariffs, and rates; and (5) approve the related financing arrangements ("Proposed Financing").⁸

The Application was filed pursuant to HRS §§ 269-7, 269-17 and/or 269-19; and HAR Title 6, Chapter 61, Subchapters 2, 6, 9, and 10 as applicable.

Administrative Rules ("HAR") § 6-61-62. No persons moved to intervene or participate without intervention in this docket.

⁸In addition, Applicants request that KUC's unaudited financial statements submitted as Exhibit C of the Application be accepted in lieu of audited financial statements otherwise required by HAR §§ 6-61-105(c) and 6-61-75, pursuant to HAR § 6-61-92 ("Waiver Request").

Proposed Transfer

With respect to the Proposed Transfer, Applicants state that on June 2, 2008, KUC and KWSC entered into the Agreement, and Affiliate and KWSC entered into the Affiliate Agreement (collectively, "Agreements"), which set forth the terms and conditions under which KUC and Affiliate will sell and transfer the "Transferred Assets," as defined in Section 1.1 of the Agreements, to KWSC. Upon satisfaction of the conditions of the Agreements, including commission approval of Applicants' requests, "KUC and Affiliate will sell, assign, transfer, deliver and convey to KWSC, free and clear of all liens, claims, mortgages, pledges and encumbrances, all of [their] rights, title and interests in the Transferred Assets including, but not limited to, KUC's CPCN."⁹ Thereafter, KWSC will assume the public service obligation to provide water and sewer services to KUC's customers pursuant to Section 1.4 of the Agreement, and operate KUC's system under the name "Kona Water Service Company."

Applicants state that KWSC is or will be sufficiently fit, willing, and able to: (1) provide service to KUC's service territory; (2) satisfy all of its public utility obligations; and (3) conform to the terms, conditions, rules, and regulations of the commission. Moreover, Applicants contend that the Proposed Transfer is reasonable and in the public interest. In support, Applicants represent the following:

⁹See Application at 9.

- KWSC will have the financial fitness and ability to fund and continue the operations of KUC through the revenues generated from the operations being purchased.
- KWSC through its upstream affiliates have extensive experience in the water and wastewater industries, expertise in regulatory issues, and the support necessary to ensure the successful operation of the utility without any degradation of service.
- KWSC will have access to excellent technical, managerial, and financial support from CWSG and its subsidiaries. For instances, due to CWSG's financial strength, CWSG can obtain lower financing costs on a more favorable capitalization structure than its subsidiaries.
- Applicants are committed to ensuring the successful transition from KUC to KWSC without degradation of the quality of service and with minimal interruption to KUC's customers.
- KWSC anticipates that the day to day operations of KUC will continue to be provided by current personnel since HWSUS, an affiliate of KWSC's parent, HWSC, is in the process of acquiring IUS, which currently operates and manages KUC.
- The transition of ownership from KUC to KWSC should be relatively seamless due to CWSG's organization and support. CWSG has vast experience in this area and has acquired and successfully integrated over thirteen water and wastewater utilities over the last ten years.
- KWSC commits and agrees that it shall abide by and conform to all applicable commission rules and orders upon closing of the Proposed Transfer, if approved. Subject to commission order, KWSC will continue to be subject to and abide by all rights and obligations currently imposed on KUC in connection with applicable commission orders, rules, and regulations. Moreover, KWSC agrees to assume and abide by all of KUC's rights and obligations under all outstanding permits, contracts and other agreements that will be assigned to and assumed by KWSC under the Agreement.
- The Proposed Transfer will not result in any increase in rates charged to KUC's customers, and KWSC has no immediate plans to seek a general rate increase.

- KUC's customers will benefit from KWSC's ability to access lower cost financing than under current ownership, and, thus, future capital investments required to maintain services should be at a lower capital cost.
- While it does not anticipate any major or unusual capital expenditures in the near future, KWSC foresees making routine capital expenditures that will provide a tangible benefit to ratepayers and improve service quality and system reliability.
- KWSC plans to utilize the management and employees of its Hawaii-based affiliates to provide assistance and support to KUC which will also have access to the expertise and resources of CWSG and its affiliates. Compared to KUC's current owners, KWSC, HWSC, and CWSG possess greater experience, resources, and capability to operate and maintain KUC's assets, to invest in necessary capital improvements, and, in the event of an emergency or natural disaster, to promptly deploy required resources to resolve any reliability and service issues.
- The Proposed Transfer will result in certain efficiencies, economies of scale, improvements and enhanced capabilities that are not achievable under current KUC operations and ownership, which will benefit KUC's customers. Improved efficiencies are expected in the areas of engineering, operations, construction, legal, accounting, insurance, financial, tax, regulatory and other services, all or most of which are currently outsourced by KUC.

2.

Proposed Financing

The purchase price for the Transferred Assets¹⁰ is set forth in Section 2.1 of the Agreements ("Purchase Price").¹¹

¹⁰The term "Transferred Assets" is defined in Section 1.1 of the Agreements and include, among other things, the utility system assets (which includes, but is not limited to, the wells, pumps, motors, and distribution and wastewater collection lines), and other tangible and intangible property.

Applicants represent that the Purchase Price and other funds needed to consummate the Proposed Transfer will be funded through a combination of approximately seventy percent equity from HWSC and approximately thirty percent in long and/or short term financing from CWSG.

KWSC is proposing to obtain long-term financing through debt incurred by CWSG. CWSG is expected to issue unsecured debt securities, proceeds from which CWSG would lend to KWSC under an inter-company promissory note. Under such an instrument, KWSC will pay the principal, interest, fees and costs related to the amount of the loan proceeds received by KWSC. The interest rate payable by KWSC on the inter-company loan will be the same as the interest rate payable by CWSG at the time the debt was incurred or as is periodically charged in the case of a variable interest rate. Thus, KWSC will not pay any premium for the loan and will benefit from the better than average interest rate that CWSG can obtain. At this time, the interest rate and term of the CWSG financing is unknown, however, the debt will be issued by negotiated bid.¹² Presently, KWSC estimates that the expense for the issuance of the proposed debt will be approximately \$100,000.

¹¹Section 2.1 and other portions of the Agreements were filed confidentially under the Protective Order issued on June 26, 2008, in this docket.

¹²According to Applicants, "CWSG's most recent long term unsecured financing was placed in September 2006 for a 25 year term at 6.02%." However, at this time KWSC anticipates that the term of the long term financing will be at an interest rate not to exceed 7.4% for a term of ten to thirty years. See Application at 17 n.18.

Applicants desire to consummate and close the Proposed Transfer on or before December 31, 2008, and, thus, request that the commission issue a decision on their Application on or before November 30, 2008. Due to this timeframe, if commission review of the financing request will delay the issuance of a decision on the Proposed Transfer beyond November 30, 2008, Applicants request that the commission bifurcate its decision so that a decision the Proposed Transfer be issued on or before November 30, 2008, to allow a December 31, 2008 closing.¹³

C.

Consumer Advocate's Position

On October 15, 2008, the Consumer Advocate filed its Statement of Position ("CA's SOP") recommending that the commission approve the Proposed Transfer, including the CPCN granted to KUC, and the Proposed Financing, as set forth in the Application. The Consumer Advocate also recommends that the commission impose certain regulatory conditions. The basis of the Consumer Advocate's position and the various conditions that it recommends the commission impose are discussed in the paragraphs below.

With respect to the Proposed Transfer, the Consumer Advocate states that KWSC appears to possess the

¹³In such an event, KWSC intends to obtain short term financing from CWSG until commission review is completed and a decision can be made on the long term financing; at which time, if approved, KWSC will replace the short-term financing with the approved long-term financing. According to Applicants, short-term financing will be for a period less than twelve months and the interest rate will likely be prime plus 1.5% or LIBOR plus 0.5%.

technical and managerial expertise to reliably operate and manage the assets to be acquired from KUC and Affiliate in compliance with existing regulatory requirements. This assertion is based on, among other things: (1) the understanding that former employees of IUS, who are now employees of HWSUS, an affiliate of KWSC, that currently operates KUC's system, will continue to operate the facility upon closing of the transaction; (2) the recognition that HWSC presently provides reliable potable water service in its service territories in Kaanapali and Pukalani on the island Maui; and (3) the recognition that, as a wholly owned subsidiary of HWSC (which is a subsidiary of CWSG), KWSC is assumed to have ready access to qualified personnel to assist in the management and operation of the acquired utility, if needed on an emergency basis.

Additionally, the Consumer Advocate states that KWSC appears to have the financial resources to fulfill its commitment to maintain the provision of reliable water and wastewater services to KUC's customers. Among other things, the Consumer Advocate notes that in KUC's last rate case, the commission authorized a rate increase intended to generate sufficient revenues to cover the normalized test year operating expenses, taxes, and provide an opportunity to earn an 8.85% return on investment. According to the Consumer Advocate, commission approval of KWSC's request to adopt KUC's rates would allow KWSC the same financial opportunities contemplated during KUC's last rate case proceeding. Moreover, the Consumer Advocate contends that: (1) review of HWSC's financial statements

indicate that HWSC has sufficient financial resources to sustain KWSC's operations, if needed; and (2) KWSC, as a public utility, will have the ability to seek commission approval to increase its rates if KUC's current authorized rates are insufficient.¹⁴

The Consumer Advocate also states that the Proposed Transfer appears to be reasonable and in the public interest. Specifically, the Consumer Advocate asserts that "based on a review of the derivation of the agreed upon purchase price, as described in the confidential response to CA-IR-15, it appears that the purchase price for the acquisition of the KUC and Affiliate assets is fair."¹⁵ Additionally, according to the Consumer Advocate, the Proposed Transfer is expected to provide KUC's ratepayers with long-term benefits through economies of scale that can be achieved as a result of the Proposed Transfer. In addition to economies of sale, expected benefits from the Proposed Transfer include the lower cost of capital that can be realized through affiliation with CWSG, and the lower cost of operation and management of the acquired utility since an affiliate of KWSC acquired IUS, which currently operates and manages KUC's assets. However, in order to assess the reasonableness of any economies of sale that may be realized and to ensure that cross-subsidization of the costs of one operation

¹⁴The Consumer Advocate notes that, according to the September 25, 2008 filed 8-K, CWSG's unsecured revolving line of credit was increased to \$95 million (from \$55 million) for the period from September 30, 2008, to March 31, 2009, which will be used for working capital, permitted acquisitions, general corporate purposes, and to bridge capital expenditures. See CA's SOP at 14.

¹⁵See CA's SOP at 19.

by the customers of another does not occur, the Consumer Advocate states that HWSC must have in place an accounting system that will provide the commission and the Consumer Advocate with the ability to independently review the costs charged to each Hawaii operation of HWSC.¹⁶ The Consumer Advocate notes that in response to an information request, HWSC proposed an accounting system which is expected to provide independent review of the allocation of costs and direct charges. On a related matter, the Consumer Advocate recommends that KWSC be required to provide a copy of the annual financial report filed with the commission so that the Consumer Advocate can monitor KWSC's financial performance under HWSC's ownership.

In addition, the Consumer Advocate states that the Agreements identify other items that are necessary for KWSC to assume KUC's duties and responsibilities as a public utility, such as obtaining perpetual non-exclusive easements over real property that is owned by WB Kukio, KUC, and Affiliate, which are necessary to provide KWSC with access to utility system assets. The Consumer Advocate notes KUC's representation that easements for all of the identified areas have not been granted and that it expects that the easements will be granted upon closing. Recognizing the importance of obtaining the necessary easements

¹⁶As a condition of the commission's approval of HWSC's acquisitions of Pukalani STP and the Waikoloa Utilities, the commission required HWSC to establish and implement accounting procedures and record keeping processes, especially for matters related to the allocation of common costs, to ensure that sufficient records exist to facilitate future regulatory review of any and all regulated, non-regulated, and unaffiliated allocated costs. See Pukalani at 26; Waikoloa at 27.

and the fact that it may take additional time to complete a survey and negotiate them, the Consumer Advocate recommends that KWSC be required to submit a report at the time of closing as to the status of the easements that have been obtained and need to be obtained, and provide status reports every six months thereafter until all easements have been obtained.

Furthermore, the Consumer Advocate recommends that Applicants be required to maintain an accounting of the costs incurred to pursue and complete the asset purchase, and with the exception of the financing costs, Applicants should be required to record such costs in "below the line" accounts. According to the Consumer Advocate, this form of accounting will ensure that no costs associated with the processing of the instant application are directly or indirectly recovered from ratepayers in future rate proceedings.

The Consumer Advocate further states that KWSC's proposal to adopt KUC's current authorized Tariff, and resubmit KUC's Tariff under KWSC's name is reasonable and should be approved. With regard to this, the Consumer Advocate contends that the rates to be charged for utility service and the rules and regulations that govern the provision of such services should be reserved for a formal rate case and not determined within the context of an HRS § 269-19 application. However, as a courtesy, the Consumer Advocate recommends that KWSC notify KUC's customers of the change in ownership and service provider.

With respect to the Proposed Financing, the Consumer Advocate states that the assets of KUC and Affiliate are

used in the provision of regulated utility service and, thus, "the funds that are to be acquired for the proposed long-term financing meet the requirements set forth in HRS § 269-17."¹⁷ In addition, while the specific terms of CWSG financing is currently not known, the Consumer Advocate states that the proposal to enter into the proposed financing is reasonable, provided that the loan proceeds can be obtained under similar terms that CWSG received in 2006. However, the Consumer Advocate recommends that KWSC submit the terms of the loan agreement, when the terms are known, together with copies of the executed loan documents to complete the record of this proceeding. Moreover, it states that KWSC should be allowed to recover the costs incurred to secure such financing.

D.

Applicants' Response

On October 23, 2008, Applicants filed their Response Statement to the CA's SOP ("Response"). In short, Applicants state that they do not object to the Consumer Advocate's regulatory conditions and recommendations, and that the docket is ready for decision-making by the commission.

¹⁷See CA's SOP at 23.

II.

Discussion

A.

Proposed Transfer

State law vests the commission with broad powers to review the Proposed Transfer by which ownership of KUC will be transferred to KWSC. In particular, HRS § 269-19 states, as follows:

No public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means, directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the public utilities commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void.

HRS § 269-19 (emphasis added).

Moreover, HRS § 269-7(a) provides the commission with the power to examine the condition of a public utility, the manner in which it is operated with reference to the safety or accommodation of the public, "and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Commission approval under HRS § 269-7(a) requires a finding that the proposed sale of assets is "reasonable and consistent with the public interest."¹⁸

¹⁸See Pukalani at 15 n.26 (citing In re Sprint Communications Company, L.P., Sprint Payphone Services, Inc., and ASE Telecom, Inc., Docket No. 05-0045, Decision and Order No. 21715, filed on

A transaction is said to be reasonable and consistent with the public interest if the transaction "will not adversely affect the . . . [utility's] fitness, willingness, and ability to provide" public utility service in the State as authorized in its CPCN.¹⁹

1.

KWSC is Fit, Willing, and
Able to Provide the Proposed Service

When reviewing a transaction under HRS § 269-19, the commission has applied the standard of review of HRS § 269-7.5, which states that the applicant must be "fit, willing, and able properly to perform the service proposed."²⁰ Accordingly, when reviewing Applicants' requests in the Application under HRS § 269-19, the commission must find that: (1) KWSC will be fit, willing, and able to perform the proposed service under

April 4, 2005 ("Sprint"), at 11); see also In re ITC^DeltaCom Communications, Inc., et al., Docket No. 02-0345, Decision and Order No. 19874, filed on December 13, 2002); In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al., Docket No. 00-0354, Decision and Order No. 18220, filed on November 30, 2000; In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications, et al., Docket No. 00-0047, Decision and Order No. 17662, filed on April 10, 2000.

¹⁹See Pukalani at 15 n.27 (citing Sprint at 11-12).

²⁰See Pukalani at 15-16 n.28 (citing In re Paradise MergerSub, et al., Docket No. 04-0140, Decision and Order No. 21696, filed on March 16, 2005, at 13); see also In re Citizens Communications Company, Kauai Electric Division and Kauai Island Utility Co-op, Docket No. 02-0060, Decision and Order No. 19658, filed on September 17, 2002, at 14-15, referencing In re GTE Corp. and Bell Atlantic Corporation, Docket No. 98-0345, Decision and Order No. 17377, filed on November 17, 1999); In re BHP Hawaii Inc., GASCO, Inc. and Citizens Utilities Company, Docket No. 97-0035, Decision and Order No. 15899, filed on September 10, 1997.

KWSC's ownership (collectively referred to as the "Fitness Standard"); and (2) the transfer is reasonable and in the public interest.

Here, having reviewed the entire record, the commission finds that the Proposed Transfer, including the transfer of KUC's CPCN to KWSC, satisfies the Fitness Standard.²¹ At the outset, it appears that KWSC through its parent, HWSC, is financially fit to purchase the Transferred Assets and consummate the Proposed Transfer as evidenced by the financial statements filed in support of the Application.²² The Proposed Transfer will be funded through a combination of approximately seventy percent equity from HWSC and approximately thirty percent in long and/or short term financing from CWSG, which appears to be an acceptable capital structure.²³ It also appears that KWSC should, based on financial projections, be able to fund the utility services

²¹Applicants' Waiver Request is made pursuant to HAR § 6-61-92. Applicants state that as a small public utility, KUC does not have audited financial reports, and to have them prepared for the Application would delay this proceeding and would unjustly impose additional financial burdens on KUC. See Application at 6 n.11. Upon review, the commission finds that HAR § 6-61-92 is not applicable for this proceeding. However, the commission, on its own motion, determines that unaudited financial statements are adequate under the circumstances, and that in order to secure the just, speedy, and inexpensive determination of this proceeding Applicants' Waiver Request should be granted pursuant to HAR § 6-61-1.

²²See Application, Exhibit D.

²³See, e.g., In re Citizens Communications Company, dba The Gas Company, K-1 USA Ventures, Inc., and Hawaii Gas Company, L.L.C., nka The Gas Company, L.L.C., Docket No. 03-0051, Decision and Order No. 20354, filed on July 25, 2003, at 24 and 48.

currently provided by KUC through the proceeds generated from utility service.²⁴

In addition, KWSC through its parent HWSC, which is a subsidiary of CWSG, will have access to the technical, managerial, and financial support of CWSG and its subsidiaries. Moreover, an affiliate of HWSC acquired IUS, which currently manages and operates KUC. Applicants represent that the day-to-day operations of KUC will continue to be provided by the same personnel that currently operates the system. Thus, it appears that the transition of ownership from KUC to KWSC, for KUC's customers, should be practically seamless. Based on the foregoing, it appears that KWSC possesses the technical, managerial, and financial ability to operate and manage KUC in compliance with existing regulatory requirements.

2.

The Proposed Transfer is Reasonable and in the Public Interest

Commission review under HRS § 269-19 also requires that the transfer be reasonable and in the public interest. Upon review, the commission finds that the Proposed Transfer meets that standard. First, the Proposed Transfer should not negatively affect KUC's customers. KWSC intends to adopt KUC's current Tariff; thus, the Proposed Transfer, if approved, will not result in any increase in the rates charged to KUC's customers, or the terms of service.

²⁴See Application, Exhibit F.

Additionally, KUC customers, under KWSC control, should benefit from the utility's ability to access lower cost of financing through its association with CWSG. As stated by Applicants, "[a]s a result of this lower cost financing, future capital investments required to maintain water and wastewater services to KUC's customers should be at a lower capital cost as compared to under current ownership."²⁵ Applicants also assert that KWSC anticipates making routine capital expenditures that should improve service quality and system reliability. Moreover, according to Applicants, KWSC, HWSC and CWSG possess greater experience and resources to: (1) operate and maintain KUC's assets; (2) invest in required capital improvements; and (3) promptly deploy required resources to resolve any reliability and service issues in the case of an emergency than KUC's current owners. Furthermore, it appears that KUC's current customers could benefit through certain efficiencies and economies of scale that cannot be obtained under current ownership since KWSC would be able to draw on and benefit from its close association with HWSC, which owns and operates similar types of utilities on the islands of Maui and Hawaii. For all these reasons, the commission concludes that the Proposed Transfer should be approved.

In addition, for the reasons set forth above, the commission finds that Applicants' request to allow KWSC to continue to use (i.e., adopt) KUC's Tariff is reasonable and consistent with the public interest. As a general statement, the

²⁵See Application at 15.

commission concurs with the Consumer Advocate's statement that rate issues, including the rates charged for utility service and the rules and regulations that govern the provision of service, should be reserved for a formal rate case and not determined within the context of a transfer application. The commission's decision on this matter is consistent with prior decisions.²⁶ As such, the commission concludes that Applicants' request that KWSC be allowed to adopt KUC's Tariff, previously approved for KUC and currently in effect, should also be approved.

B.

Proposed Financing

Under HRS § 269-17, a public utility must obtain prior commission approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve months after the date of issue. This section restricts the purpose for which stocks and other evidences of indebtedness may be issued to, among other things, the acquisition of property or the construction, completion, extension, or improvement of, or addition to its facilities or services.

Here, the commission finds that the Proposed Financing, as described in the Application, satisfies the requirements of HRS § 269-17. Specifically, the assets of KUC and Affiliate that are being acquired through the Proposed Financing are used in the provision of regulated utility services. Thus, it appears that

²⁶See Pukalani at 25; Waikoloa at 26.

the Proposed Financing is consistent with the requirements of HRS § 269-17. Given the commission's determination that the Proposed Transfer is reasonable and in the public interest, the commission concludes that the Proposed Financing is also reasonable and consistent with the public interest, and should be approved.²⁷

C.

Regulatory Conditions

The commission finds that the Consumer Advocate's recommendations for imposing certain conditions on the Proposed Transfer and Proposed Financing²⁸ to be reasonable and consistent with the public interest. Applicants, in their Response, assert that they do not object to the Consumer Advocate's regulatory conditions and recommendations set forth in the Consumer Advocate's SOP.²⁹ Accordingly, the commission adopts the following conditions as reasonable and appropriate, in this instance:

- At the time of closing, KWSC shall provide written notification to the commission and Consumer Advocate regarding the status of its efforts to obtain all necessary easements; and, thereafter, KWSC shall file a status report every six months until all necessary easements have been obtained.

²⁷Given the decision regarding the Proposed Financing herein, Applicants' request for a bifurcation of the matters of this docket due to timing concerns is moot.

²⁸See CA's SOP at 24-26.

²⁹See Applicants' Response at 2-3.

- KWSC shall provide the Consumer Advocate with a copy of its annual financial report filed with the commission, on a going forward basis.³⁰
- KWSC shall notify KUC's customers of the change in service provider, and submit proof of compliance with this requirement with the commission and the Consumer Advocate.
- Related to the Proposed Financing, KWSC shall notify the commission of the final terms of the loan agreement, when finalized, and provide copies of the executed loan documents to complete the record in the instant docket.
- KWSC and HWSC shall record any transaction and transition costs associated with the Proposed Transfer, with the exception of the financing costs, in a "below the line" account, consistent with prior commission decisions and orders on the matter.

Where applicable, unless specifically noted otherwise, KWSC shall adhere to or comply with the regulatory conditions set forth above within thirty days of the closing of the Proposed Transfer.

Moreover, given Applicants' representations set forth in the Application and the determinations set forth herein, the commission also finds it reasonable and in the public interest to impose the following additional regulatory conditions on KWSC and its associated entities (i.e., HWSC and CWSG, as applicable):

- The commission's applicable orders, rules, conditions, and requirements related to KUC's water and wastewater utility operations shall continue in effect, as applied to KWSC, upon effectuation of the Proposed Transfer, including the commission's requirement for the filing of annual financial reports pursuant to HRS § 269-8.5 and Decision and Order No. 20103³¹ and the payment of public utility fees under HRS § 269-30.

³⁰This regulatory condition is consistent with the filing requirement imposed on KUC. See Decision and Order No. 20103 at 22-23.

³¹See Decision and Order No. 20103 at 22-23.

- Within thirty days of the date of this Decision and Order, HWSC and CWSG shall submit verified statements, signed by an officer or authorized person of each entity, attesting to the truth and accuracy of the statements made in the Application, filed on June 6, 2008.

Accordingly, the commission concludes that approval of the Proposed Transfer and the related Proposed Financing, as described in the Application, should be conditioned on the adherence to and compliance with the regulatory conditions described above. Moreover, provided that the regulatory conditions set forth above are adhered to and complied with, as applicable, the commission confirms, that following the closing of the Proposed Transfer, KWSC shall have the right to provide utility service to KUC's authorized service territory on the island of Hawaii under KUC's Tariff, republished under KWSC's name.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Transfer (which includes the transfer of KUC's CPCN) and the related Proposed Financing, as described in the Application, are approved; provided that KWSC and its associated entities (i.e., HWSC and CWSG, as applicable) adhere to and comply with the following regulatory conditions, as discussed in Section II.C of this Decision and Order:

- (a) At the time of closing, KWSC shall provide written notification to the commission and Consumer Advocate regarding the status of its efforts to obtain all necessary easements; and, thereafter, KWSC shall file a status report every six months until all necessary easements have been obtained.
- (b) KWSC shall provide the Consumer Advocate with a copy of its annual financial report filed with the commission, on a going forward basis.
- (c) KWSC shall notify KUC's customers of the change in service provider, and submit proof of compliance with this requirement within thirty days of the closing of the Proposed Transfer.
- (d) Related to the Proposed Financing, KWSC shall notify the commission of the final terms of the loan agreement, when finalized, and provide copies of the executed loan documents to complete the record in the instant docket.
- (e) KWSC and HWSC shall record any transaction and transition costs associated with the Proposed Transfer, with the exception of the financing costs, in a "below the line" account, consistent with prior commission decisions and orders on the matter.
- (f) The commission's applicable orders, rules, conditions, and requirements related to KUC's

water and wastewater utility operations shall continue in effect, as applied to KWSC, upon effectuation of the Proposed Transfer, including the commission's requirement for the filing of annual financial reports pursuant to HRS § 269-8.5 and Decision and Order No. 20103 and the payment of public utility fees under HRS § 269-30.

(g) Within thirty days of the date of this Decision and Order, HWSC and CWSG shall submit verified statements, signed by an officer or authorized person of each entity, attesting to the truth and accuracy of the statements made in the Application, filed on June 6, 2008.

2. Applicants' Waiver Request is granted.

3. Applicants' request to allow KWSC to adopt KUC's Tariff, which was previously approved for KUC and currently in effect, following the closing of the Proposed Transfer, is granted. KWSC shall re-file KUC's Tariff under KWSC's name with the same rules, regulations, and rates currently approved for KUC.

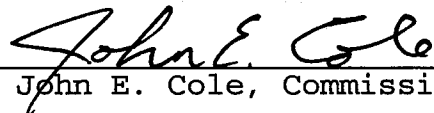
4. Provided that the regulatory conditions set forth in paragraph one are adhered to and complied with, as applicable, the commission confirms, that following the closing of the Proposed Transfer, KWSC shall have the right to provide utility service to KUC's authorized service territory on the island of Hawaii under KUC's Tariff, republished under KWSC's name.

5. KWSC (and its associated entities, as appropriate) shall timely comply with all of the regulatory conditions and requirements described herein, as applicable. Failure to comply with any of these regulatory conditions and requirements may constitute cause to void this Decision and Order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii DEC - 1 2008.

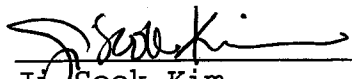
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0109.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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